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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

MARIA J.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Real Party in Interest.

F073798

(Super. Ct. Nos. 13CEJ300029-6 &
13CEJ300029-7)

OPINION

ROBERT M.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF SOCIAL
SERVICES,

Real Party in Interest.

F073801

(Super. Ct. Nos. 13CEJ300029-6 &
13CEJ300029-7)

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas, Judge.

Maria J., in pro. per., for Petitioner.

Robert M., in pro. per., for Petitioner.

No appearance for Respondent.

Daniel Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

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Maria J. (mother), in propria persona, seeks an extraordinary writ from the juvenile court's dispositional orders denying her reunification services (Welf. & Inst. Code, § 361.5, subd. (b)(10) & (13))¹ and setting a section 366.26 hearing as to her now three-and two-year-old daughters, A.M. and B.M., respectively. Mother contends there was insufficient evidence to support the denial of services order. The children's father, Robert M., also seeks extraordinary writ relief from the juvenile court's orders on other grounds. On our own motion, we consolidate their writ petitions and deny relief.

PROCEDURAL AND FACTUAL SUMMARY

These dependency proceedings were initiated in February 2016 when the Fresno County Department of Children and Family Services (department) took then two-year-old A.M. and 19-month-old B.M. from mother and Robert's custody after eight-year-old L.B., the children's half sister, disclosed that Robert sexually abused her two years before, while she was in his care. At the time L.B. made her disclosure, she was in a permanent plan of long-term foster care with her three sisters and brother, having been adjudged a dependent of the juvenile court in March 2013. Although A.M. and B.M. are

* Before Levy, Acting P.J., Franson, J. and Peña, J.

¹ All statutory references are to the Welfare and Institutions Code.

the subjects of this petition, we begin our factual summary with mother and Robert's earlier involvement with the department because it reflects the ongoing neglect that mother and Robert's children endured and supports the juvenile court's ruling.

Mother has seven minor children, now 10-year-old M.B., nine-year-old V.B., eight-year-old L.B., five-year-old R.J., four-year-old J.M., A.M. and B.M. Paul B. is the father of M.B., V.B. and L.B. and Robert is the father of the other four children. The department received numerous referrals concerning parental neglect, sexual abuse and physical abuse over the years beginning in June 2009 when mother took then 20-month-old L.B. to the hospital because L.B.'s vagina was red and irritated. Mother suspected that Paul had done something to L.B. The examining physician found no evidence of tearing or trauma and no further action was taken. Later that month, the department received a report that Paul's developmentally delayed sister claimed to have seen Paul sexually molest L.B. The department did not find sufficient evidence to investigate. The next referral came in May 2011 when the police placed a protective hold on L.B., M.B., V.B. and R.J. after finding mother's home dirty, smelly and without electricity. The department transported the family to a shelter but took no further action, considering the situation to be stable. In March 2012, the department was notified that mother tested positive for marijuana while giving birth to J.M. Mother claimed at the time, that she had only used marijuana one time and that was the day before she entered the hospital. In January 2013, a caller reported that a friend of the family took J.M. to the doctor because she had a diaper rash where the skin was raw and bleeding. Mother was six months pregnant, smoking marijuana and overwhelmed with caring for the children. The department responded and a safety plan was made whereby a family friend would care for the children until mother was able.

In January 2013, the department received a referral about the condition of the family home and the safety of the children. The social worker found mother, Paul, Robert and the children living in an unsanitary and unsafe environment. One bedroom

was cluttered with piles of clothes and dog feces and the other bedroom contained dog feces and a strong odor of dog urine. Then 10-month-old J.M. had a bleeding diaper rash caused by neglect. In addition, mother and Robert were using marijuana. The department took the children into protective custody because of the ongoing neglect and filed a dependency petition.

The juvenile court ordered the children removed from parental custody, denied Paul reunification services and ordered mother and Robert to complete a plan of reunification that included a substance abuse evaluation and any recommended treatment. That same month, the department received a report that then six-year-old V.B. told her foster parent that her parents made her watch pornography. She said this happened before she was placed in foster care. The reporting party was unsure to which set of parents V.B. was referring because Paul and his girlfriend lived with mother and Robert. When the reporting party asked V.B. if anyone touched her vagina, V.B. shut down emotionally and made limited eye contact. The reporting party also said that V.B. engaged in sexualized play, tried to “grope” her sister and simulate sexual intercourse with the dog and various objects. During a supervised visit, V.B. tried to hide from Robert. M.B., then seven years old, said she liked her foster father because he did not do nasty things with little girls.

In April 2013, the department received a report that mother gave birth to A.M. and neither tested positive for drugs, although mother was testing positive for marijuana the month before. The police assessed A.M.’s situation at the department’s request and concluded A.M. was not in immediate risk. Mother and Robert had adequate food and supplies and there was family support. In addition, they were participating in their services plan and working diligently to regain custody of the older children.

Over the next two months, the department received multiple reports that L.B. and V.B. were acting out sexually by touching each other inappropriately and simulating sexual acts with objects such as a toy and pillow. V.B. stated she had seen mother having

sex with another man while sleeping in the same room. She also said she watched “nasty” movies with mother and “father” (who she did not identify) when she stayed home from school.

In late January 2014, the department received a call from someone concerned that A.M. (then nine months old) was born with a low birth weight and mother and Robert were not feeding her appropriately. The case managing social worker developed an action plan which required mother and Robert to keep A.M.’s medical appointments, follow the eating schedule recommended by her pediatrician, track A.M.’s consumption, and not use drugs or alcohol in the home or allow anyone else to do the same, including friends and family. Mother and Robert agreed to comply with the action plan. The department deemed the referral unfounded for general neglect.

A week later, the department received a referral that there were two women smoking marijuana inside mother and Robert’s home. At the time, L.B., M.B. and V.B. were on a liberal visit with mother and had returned from school. One of the women smoking marijuana was a paternal aunt and mother and Robert knew she was smoking marijuana in their home. Mother and Robert excused the aunt’s behavior, explaining that she smoked marijuana medicinally and had a marijuana card. They were assessed by law enforcement and did not show any signs of being under the influence of a substance. The department deemed the referral inconclusive of general neglect but suspended mother’s liberal visits.

In May 2014, the juvenile court terminated mother and Robert’s reunification services and set a section 366.26 hearing for August 2014. Meanwhile, in July, mother gave birth to B.M. In August 2014, at the section 366.26 hearing, the court ordered the five older children into a permanent plan of long-term foster care. The court granted mother and Robert monthly supervised visits and the department discretion to advance to liberal and extended visits. A.M. and B.M. were allowed to stay in their parents’ custody.

In May 2015, L.B., M.B. and V.B. stated they did not want to visit mother and Robert. M.B. reported that she was left alone with her siblings while her parents went out and took drugs. V.B. reported that everyone in the home smoked “weed.” L.B. said she was glad she did not go home with mother because her parents smoked inside the home and it made it hard for her to breathe because she has asthma. M.B. stated that she was afraid to go home and that her parents smoked a “white and green.” V.B. stated her parents smoke “weed” at night and the “weed” is green. V.B. said she had seen it in her father’s room and said her parents left them alone for hours. A social worker responded to the family home and observed that there was no electricity and noted a smell of marijuana. Mother and Robert denied smoking marijuana in the children’s presence and leaving them alone. They were sent to drug test and tested positive for marijuana. They agreed to stop using marijuana and to attend Alcoholics Anonymous/Narcotics Anonymous meetings and complete a substance abuse evaluation.

In July 2015, mother entered outpatient substance abuse treatment. At the same time, she and Robert were being evicted from their apartment for not paying their rent and mother was missing her classes. A week later, she transferred to an inpatient program with A.M. and B.M. She tested positive for marijuana twice that month. Robert was also attempting to enroll in substance abuse treatment and find a place to live. At the end of July 2015, mother left her treatment program accompanied by Robert.

In September 2015, the department received a referral that mother continued to abuse drugs. The caller was concerned about A.M. and B.M.’s well-being. In December, a caller reported seeing mother blow marijuana smoke into B.M.’s face to calm her crying. According to the caller, mother said the smoke would also put B.M. to sleep. The caller also stated that Robert slapped B.M. on the left side of her face, leaving a bruise several inches above her eye. The caller also stated that the couple smoked marijuana every day and took other drugs in front of the children and that Robert was selling narcotics from the home. In addition, mother had been seen with the baby outside

in the cold weather with just a T-shirt and pants. A social worker went to the family home and observed that A.M. had an old scar on her right eye. Mother said it happened weeks before when A.M. hit the armrest of the sofa. B.M. had no visible marks or bruises. Mother and Robert denied using drugs. The department deemed the referral unfounded for neglect or physical abuse.

In February 2016, the department received a referral that V.B. was seen touching herself inappropriately in the living room of her foster home. The social worker interviewed V.B., L.B. and M.B. during her monthly home visit, and L.B. disclosed that two years before, Robert fondled her vaginal area over her clothes while forcing her to watch a pornographic movie. She said Robert also touched V.B. and that mother knew about the touching and witnessed it but did not do anything about it. V.B. denied that Robert touched her in a “bad” way but confirmed that Robert and mother made them watch movies in which adults kissed and did “gross stuff.” M.B. also reported that mother and Robert showed her “nasty stuff” twice during their unsupervised visits where people were touching each other where “you are not suppose[d] to.” She said it was “adult stuff” and the people did not have any clothes on. It made her uncomfortable and she wanted to turn away, but her parents told her to continue to watch it.

Robert denied inappropriately touching the children’s private parts or making them watch movies with sexual content or pornography. Mother cried when asked about the allegations and denied that anyone hurt her daughters.

In February 2016, the department took A.M. and B.M. into protective custody out of concern that Robert would sexually abuse them and that mother would not protect them. The department filed a dependency petition alleging the children were described under section 300, subdivisions (b)(1) (failure to protect), (d) (sexual abuse) and (j) (abuse of sibling). The department subsequently amended the petition adding allegations under subdivision (b) that mother and Robert placed the children at risk because of their

substance abuse (marijuana) and resistance to treatment. The department placed the children in foster care.

In May 2016, the juvenile court convened a contested jurisdictional/dispositional hearing as to A.M. and B.M.² on the department's recommendation to sustain the allegations and deny mother and Robert reunification services under section 361.5, subdivision (b)(10) and (13). Mother's attorney sought to establish that A.M. and B.M. were removed only because of L.B.'s sexual abuse allegation and that L.B. provided inconsistent statements. Mother's attorney called social worker Maria Salazar to testify and asked if A.M. and B.M. were removed because of the sexual molestation allegations. She testified that was one of the allegations but they were also removed because of neglect. Robert's attorney asked Salazar if she knew whether mother and Robert were abusing substances before A.M. and B.M. were taken into protective custody. She said the only information she had was the information in the department's report that mother participated in two programs in June and July of 2015 and tested positive. Father testified he tested positive for marijuana in April 2016. Prior to that, he and mother had not used since 2015. He denied molesting any of the girls or forcing them to watch inappropriate movies. This allegation regarding the movies was made after the children were removed in 2013 and he had a social worker come to the home and review his movies. He said it was never raised again. He believed he and mother were taking good care of A.M. and B.M.

Mother's attorney argued that L.B.'s allegations of sexual abuse were inconsistent and insufficient to adjudge the children dependents and order them removed from parental custody. She asked the court to return the children to mother and Robert. She

² The juvenile court also conducted a contested section 366.26 hearing as to the older children and terminated parental rights. Mother appealed from the court's termination order and her appeal is pending before this court (*M.J. v. Superior Court* (2016, F073803)).

did not challenge the department's recommendation to deny the parents reunification services.

The juvenile court found that the statements made by A.M. and B.M.'s siblings were reliable, found the allegations in the petition true and adjudged A.M. and B.M. dependent children under section 300, subdivisions (b)(1), (d) and (j). The court denied mother and Robert reunification services under section 361.5, subdivision (b)(10) and (13) and set a section 366.26 hearing.

This petition ensued.

DISCUSSION

We begin with Robert's contention. Robert filed a writ petition, in propria persona, after his trial counsel informed this court that she had reviewed the juvenile court record and was unable to find any issues to raise on appeal. Robert asserted in his petition that the juvenile court abused its discretion by finding that a child's hearsay statement is inherently reliable. He further asserts that the siblings' hearsay statements were the only evidence to support the section 300, subdivision (d) (sexual abuse) finding. Robert attached to his petition a copy of the summary of the case and facts that his trial counsel attached to her letter to this court. We conclude Robert has abandoned the issue he attempts to raise as we now explain.

Robert contends the juvenile court erred in finding the children's hearsay statements reliable, but does not develop the argument by citing legal authority and pertinent parts of the appellate record. Instead, he relies strictly on trial counsel's factual summary of the case. When an appellant complains of error without pertinent argument, we may consider the issue abandoned. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.) We elect to do so in this case. Further, even if Robert prevailed on his challenge to the sexual abuse finding, the juvenile court would still have jurisdiction over A.M. and B.M. by virtue of having found true the allegations under section 300, subdivisions (b)(1) and (j).

We turn to mother's contention, the juvenile court erred in denying her reunification services under section 361.5, subdivision (b)(10) and (13).

When the juvenile court removes a child from parental custody, it must provide the parent reunification services unless it finds by clear and convincing evidence that any one of the exceptions enumerated in section 361.5, subdivision (b) apply. (§ 361.5, subd. (a).) In this case, the court found a basis for denying mother reunification services under section 361.5, subdivision (b)(10) and (13). Mother contends there was insufficient evidence to deny her services under either exception. We disagree.

We conclude substantial evidence supports a denial of reunification services under section 361.5, subdivision (b)(10) which allows the juvenile court to deny reunification services to a parent who failed to reunify with a sibling or half-sibling of the child and the "parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent"

It is undisputed mother's reunification services were terminated as to A.M. and B.M.'s siblings and half siblings. Mother contends, however, that section 361.5, subdivision (b)(10) does not apply to her because the siblings were removed because of a dirty house and A.M. and B.M. were removed because of the sexual abuse allegations. She further contends there is no way to relate the sexual abuse allegations to the siblings' removal because it is unclear when the alleged abuse occurred. Therefore, she argues in essence there were no "reasonable efforts" she could have made to prevent A.M. and B.M.'s removal. Mother's argument misses the point. All of the children were removed for the same underlying reason—she neglected them and placed them at risk of harm.

The department took the five older children into protective custody in 2013, after receiving multiple referrals for neglect and finding them living in unsanitary and unsafe living conditions. While attempting to reunify with the children and even after the juvenile court terminated her reunification services in 2014, mother continued to expose the children to her marijuana use as well as that of others. In May 2015, M.B., V.B. and

L.B. reported that mother and Robert went out and took drugs and left them alone. V.B. said that “everyone in the home smoked weed.” The investigating social worker reported there was no electricity in the home and she detected the smell of marijuana. Mother and Robert tested positive for marijuana and said they would stop using it, however, they did not stop. Meanwhile, beginning in April 2013, the department was receiving reports that the girls were acting out sexually and were forced to watch pornography with their parents. There was also some indication that there may have been sexual molestation going on in April 2013, based on M.B.’s statement that her foster father did not do nasty things with little girls. However, it was not until February 2016, when L.B. disclosed that Robert fondled her that the department had an express allegation of sexual molestation. By that time, mother had demonstrated that she was neglectful of the children and unable or unwilling to protect them. Thus, neglect was the problem that necessitated the removal of all of the children; a dirty home was the impetus in the siblings’ case and the risk of sexual molestation was the impetus in A.M. and B.M.’s case.

We conclude substantial evidence supports the juvenile court’s order denying mother reunification services under section 361.5, subdivision (b)(10). Having so concluded, we need not review the juvenile court’s denial of services under section 361.5, subdivision (b)(13).

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.